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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/735,558

**Applicant(s)**

AGRAWAL, ASEEM

**Examiner**

JOHN O. PRESTON

**Art Unit**

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 12-12-2003
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### Status of Claims

1. This action is in reply to the application filed on December 12, 2003.
2. Claims 1, 7, 14, 20, 27, 31, 35 have been amended.
3. Claims 1-35 are currently pending and have been examined.

### Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 
5. Claims 1, 4-6, 14, 17-19, 27, 29-31, and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostroff (US 2002/0013782 A1) and in view of Asplen

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(6,044,354), and further in view of Miller (US 2003/0216955 A1) and Stewart (US 2002/0152110 A1).

Claim 1: Ostroff discloses the following limitation(s):

- *obtaining, from competitors' websites, data relating to products similar to said proposed new product; processing said data relating to said similar products; (See at least Ostroff: page 2, paragraphs 22-26. Ostroff teaches a method of obtaining data from competitors' websites and processing said product data.)*

Ostroff does not explicitly disclose the remaining limitation(s) alone.

However, Asplen discloses the following:

- *obtaining data relating to a proposed new product from a merchant; (See at least Asplen: col. 2, lines 45-60)*

Asplen does not explicitly disclose the remaining limitation(s) alone.

However, Miller discloses the following:

- *identifying product attributes and positioning attributes based on said processed data; identifying at least one marketing mix for said proposed new product based on a result of said online market research. (See at least Miller: Figs. 7-12; page 3, paragraphs 35-38; pages 4-5, paragraphs 43 and 51. Miller teaches a method of identifying attributes based on data received from customers as well as attributes based on data received from competitors. Miller also teaches identifying a marketing mix based on responses received from consumers.)*

Miller does not explicitly disclose the remaining limitation(s) alone.

However, Stewart discloses the following:

- *conducting online market research based on said identified attributes; and (See at least Stewart: page 4, paragraph 54.*

Stewart teaches a method of conducting online market research based on product attributes provided by a merchant)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff with the marketing techniques of Asplen, Miller, and Stewart because the modification would provide the benefit of a more efficient tool for continuously and comprehensively monitoring a competitor's website (Ostroff: page 1, paragraph 11).

Claim 4: Ostroff/Asplen/Miller/Stewart discloses the limitation(s) as shown in the rejection of claim 1. Miller and Ostroff further disclose the following:

- *wherein said data relating to said similar products comprises one or more data items for each of said similar products, said data items selected from the group of data items consisting of: a product attribute name-value pair; a positioning attribute name-value pair; and product pricing. (See at least Miller: page 3, paragraphs 35-38; Fig. 8. Miller teaches a method of collecting product attributes data, including product pricing data. See at least Ostroff: pages 4-5, paragraph 63. Ostroff teaches a method of collecting product positioning data.)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen/Stewart with the marketing techniques of Miller because the modification would provide the benefit of a more efficient tool for continuously and comprehensively monitoring a competitor's website (Ostroff: page 1, paragraph 11).

Claim 5: Ostroff/Asplen/Miller/Stewart discloses the limitation(s) as shown in the rejection of claim 4. Ostroff further discloses the following:

- *wherein said step of processing comprises the sub-steps of: filtering a list of said similar products; filtering said product and positioning attributes. (See at least Ostroff: page 3, paragraph 39. Ostroff teaches a method of generating reports consisting of product data filtered from various competitors' sites relating to products comparable to the merchant's products.)*

Claim 6: Ostroff/Asplen/Miller/Stewart discloses the limitation(s) as shown in the rejection of claim 5. Miller further discloses the following:

- *generating a product attribute map by mapping said similar products onto said product attributes; generating a positioning attribute map by mapping said similar products onto said positioning attributes; (See at least Miller: Fig. 4)*
- *identifying areas on said product attribute map that are uninhabited by said similar products; identifying areas on said positioning attribute map that are uninhabited by said similar products; (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)*
- *applying clustering techniques to said product attribute map to identify clusters of products having similar product attributes; and applying clustering techniques to said positioning attribute map to identify clusters of products having similar positioning attributes. (See at least Miller: Fig. 9; page 5, paragraph 59)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen/Stewart with the marketing techniques of Miller because the modification would provide the benefit of an improved means of developing and packaging new products based on information obtained

from consumers, manufacturers, and competitors (See at least Miller: page 1, paragraph 9).

Claim 14: Ostroff discloses the following limitation(s):

- *computer program code means for obtaining, from competitors' websites, data relating to products similar to said merchant's product; computer program code means for processing said data relating to said similar products;* (See at least Ostroff: page 2, paragraphs 22-26. Ostroff teaches a method of obtaining data from competitors' websites and processing said product data.)

Ostroff does not explicitly disclose the remaining limitation(s) alone.

However, Asplen discloses the following:

- *computer program code means for obtaining data relating to said merchant's product;* (See at least Asplen: col. 2, lines 45-60)

Asplen does not explicitly disclose the remaining limitation(s) alone.

However, Miller discloses the following:

- *computer program code means for identifying product attributes and positioning attributes based on said processed data; and computer program code means for identifying at least one marketing mix for said proposed new product based on a result of said online market research.* (See at least Miller: page 3, paragraphs 35-38; pages 4-5, paragraphs 43 and 51. Miller teaches a method of identifying attributes based on data received from customers as well as attributes based on data received from competitors. Miller also teaches identifying a marketing mix based on responses received from consumers.)

Miller does not explicitly disclose the remaining limitation(s) alone.

However, Stewart discloses the following:

- *computer program code means for conducting online market research based on said identified attributes; (See at least Stewart: page 4, paragraph 54. Stewart teaches a method of conducting online market research based on product attributes provided by a merchant.)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff with the marketing techniques of Asplen, Miller, and Stewart because the modification would provide the benefit of a more efficient tool for continuously and comprehensively monitoring a competitor's website (Ostroff: page 1, paragraph 11).

Claim 17: Ostroff/Asplen/Miller/Stewart discloses the limitation(s) as shown in the rejection of claim 14. Miller and Ostroff further disclose the following:

- *said data relating to said similar products comprises one or more data items for each of said similar products, said data items selected from the group of data items consisting of: a product attribute name-value pair; a positioning attribute name-value pair; and product pricing. (See at least Miller: page 3, paragraphs 35-38; Fig. 8. Miller teaches a method of collecting product attributes data, including product pricing data. See at least Ostroff: pages 4-5, paragraph 63. Ostroff teaches a method of collecting product positioning data.)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen/Stewart with the marketing technique of Miller because the modification would provide the benefit of a more efficient tool for



continuously and comprehensively monitoring a competitor's website (Ostroff: page 1, paragraph 11).

Claim 18: Ostroff/Asplen/Miller/Stewart discloses the limitation(s) as shown in the rejection of claim 17. Ostroff further discloses the following:

- *said computer program code means for processing comprises: computer program code means for filtering a list of said similar products; computer program code means for filtering said product and positioning attributes. (See at least Ostroff: page 3, paragraph 39. Ostroff teaches a method of generating reports consisting of product data filtered from various competitors' sites relating to products comparable to the merchant's products.)*

Claim 19: Ostroff/Asplen/Miller/Stewart discloses the limitation(s) as shown in the rejection of claim 18. Miller further discloses the following:

- *computer program code means for generating a product attribute map by mapping said similar products onto said product attributes; computer program code means for generating a positioning attribute map by mapping said similar products onto said positioning attributes; (See at least Miller: Fig. 4)*
- *computer program code means for identifying areas on said product attribute map that are uninhabited by said similar products; computer program code means for identifying areas on said positioning attribute map that are uninhabited by said similar products; (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)*
- *computer program code means for applying clustering techniques to said product attribute map to identify clusters of products having similar product attributes; and computer*

*program code means for applying clustering techniques to said positioning attribute map to identify clusters of products having similar positioning attributes. (See at least Miller: Fig. 9; page 5, paragraph 59)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen/Stewart with the marketing technique of Miller because the modification would provide the benefit of a more efficient process for developing and packaging new products for the marketplace (See at least Miller: page 1, paragraph 9).

Claim 27: Ostroff discloses the following limitation(s):

- *a crawler for obtaining data relating to products similar to said proposed new product from competitors' websites, said data comprising product and positioning attributes; (See at least Ostroff: page 2, paragraph 22-26)*
- *a product filtering subsystem for filtering said similar products; an attribute filtering subsystem for filtering said attributes of said similar products; (See at least Ostroff: page 3, paragraph 39)*

Ostroff does not explicitly disclose the remaining limitation(s) alone.

However, Asplen discloses the following:

- *a merchant input specification tool for obtaining data relating to a proposed new product; (See at least Asplen: col. 2, lines 45-60)*

Asplen does not explicitly disclose the remaining limitation(s) alone.

However, Miller discloses the following:

- *a mapping and clustering subsystem for identifying product and positioning attributes common to selected ones of said similar*

*products based on said filtered data; (See at least Miller: Fig. 9; page 5, paragraph 59)*

- *an analysis and reporting subsystem for identifying at least one marketing mix for said proposed new product based on a result of said online market research. (See at least Miller: page 6, paragraph 63)*

Miller does not explicitly disclose the remaining limitation(s) alone. However, Stewart discloses the following:

- *an online market research subsystem for identifying preferences based on said product and positioning attributes; and (See at least Stewart: page 1, paragraph 8-10)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online marketing method of Ostroff with the marketing techniques of Asplen, Miller, and Stewart because the modification would provide the benefit of more accurate data collection during the online market research process (see at least Stewart: page 1, paragraph 7).

Claim 29: Ostroff/Asplen/Miller/Stewart discloses the limitation(s) as shown in the rejection of claim 27. Ostroff and Miller further disclose the following:

- *said data relating to said similar products comprises one or more data items for each of said similar products, said data items selected from the group of data items consisting of: a product attribute name-value pair; a positioning attribute name-value pair; and product pricing. (See at least Miller: page 3, paragraphs 35-38; Fig. 8. Miller teaches a method of collecting product attributes data, including product pricing data. See at*

least Ostroff: pages 4-5, paragraph 63. Ostroff teaches a method of collecting product positioning data.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen/Stewart with the marketing technique of Miller because the modification would provide the benefit of a more efficient process for developing and packaging new products for the marketplace (See at least Miller: page 1, paragraph 9).

Claim 30: Ostroff/Asplen/Miller/Stewart discloses the limitation(s) as shown in the rejection of claim 29. Miller further discloses the following:

- *generates a product attribute map by mapping said similar products onto said product attributes; generates a positioning attribute map by mapping said similar products onto said positioning attributes; (See at least Miller: Fig. 4)*
- *identifies areas on said product attribute map that are uninhabited by said similar products; identifies areas on said positioning attribute map that are uninhabited by said similar products; (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)*
- *applies clustering techniques to said product attribute map to identify clusters of products with similar product attributes; and applies clustering techniques to said positioning attribute map to identify clusters of products having similar positioning attributes. (See at least Miller: Fig. 9; page 5, paragraph 59)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen/Stewart with the marketing technique of Miller because

the modification would provide the benefit of a more efficient process for developing and packaging new products for the marketplace (See at least Miller: page 1, paragraph 9).

Claim 31: Ostroff discloses the following limitation(s):

- *a crawler for obtaining data relating to products similar to said merchant's products from competitors' websites, said data comprising product and positioning attributes; (See at least Ostroff: page 2, paragraph 22-26)*
- *a product filtering subsystem for filtering said similar products; an attribute filtering subsystem for filtering said attributes of said similar products; (See at least Ostroff: page 3, paragraph 39)*
- *a scheduler for causing periodic operation of said crawler and said subsystems. (See at least Ostroff: page 5, paragraph 65)*

Ostroff does not explicitly disclose the remaining limitation(s) alone. However, Asplen discloses the following:

- *an input specification tool for obtaining data relating to a merchant's products; (See at least Asplen: col. 2, lines 45-60)*

Asplen does not explicitly disclose the remaining limitation(s) alone. However, Miller discloses the following:

- *a mapping and clustering subsystem for identifying product and positioning attributes common to selected ones of said similar products based on said filtered data; (See at least Miller: Fig. 9; page 5, paragraph 59)*
- *an analysis and reporting subsystem for identifying at least one marketing mix for one or more of said merchant's products based on a result of said online market research; and (See at least Miller: page 6, paragraph 63)*

Miller does not explicitly disclose the remaining limitation(s) alone.

However, Stewart discloses the following:

- *an online market research subsystem for identifying preferences based on said product and positioning attributes; (See at least Stewart: page 1, paragraphs 8-10)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff with the marketing techniques of Asplen, Miller, and Stewart because the modification would provide the benefit of a more efficient process for developing and packaging new products for the marketplace (See at least Miller: page 1, paragraph 9).

Claim 33: Ostroff/Asplen/Miller/Stewart discloses the limitation(s) as shown in the rejection of claim 31. Ostroff and Miller further disclose the following:

- *said data relating to said similar products comprises one or more data items for each of said similar products, said data items selected from the group of data items consisting of: a product attribute name-value pair; a positioning attribute name-value pair; and product pricing. (Miller: page 3, paragraphs 35-38; Fig. 8. Miller teaches a method of collecting product attributes data, including product pricing data. Ostroff: pages 4-5, paragraph 63. Ostroff teaches a method of collecting product positioning data.)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen/Stewart with the marketing technique of Miller because the modification would provide the benefit of an improved means of developing and packaging new products based on information obtained

from consumers, manufacturers, and competitors (See at least Miller: page 1, paragraph 9).

Claim 34: Ostroff/Asplen/Miller/Stewart discloses the limitation(s) as shown in the rejection of claim 33. Miller further discloses the following:

- *generates a product attribute map by mapping said similar products onto said product attributes; generates a positioning attribute map by mapping said similar products onto said positioning attributes; (See at least Miller: Fig. 4)*
- *identifies areas on said product attribute map that are uninhabited by said similar products; identifies areas on said positioning attribute map that are uninhabited by said similar products; (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)*
- *applies clustering techniques to said product attribute map to identify clusters of products with similar product attributes; and applies clustering techniques to said positioning attribute map to identify clusters of products having similar positioning attributes. (See at least Miller: Fig. 9; page 5, paragraph 59)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen with the marketing technique of Miller because the modification would provide the benefit of an improved means of developing and packaging new products based on information obtained from consumers, manufacturers, and competitors (See at least Miller: page 1, paragraph 9).

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6. Claims 2, 15, 28, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostroff/Asplen/Miller/Stewart and further in view of Kotler & Armstrong (Principles of Marketing, Eighth Edition, Prentice Hall 1999).

Claim 2: Ostroff/Asplen/Miller/Stewart discloses the limitation(s) as shown in the rejection of claim 1. Kotler & Armstrong further discloses the following:

- *wherein said at least one marketing mix comprises one or more product characteristics selected from the group of product characteristics consisting of: product configuration; product pricing; and product positioning.* (See at least Kotler & Armstrong: page 49)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Ostroff/Asplen/Miller/Stewart with the technique of Kotler & Armstrong because the modification would provide the benefit of a more efficient tool for conducting market research by continuously and comprehensively monitoring a competitor's website (See at least Ostroff: page 1, paragraph 11).

Claim 15: Ostroff/Asplen/Miller/Stewart discloses the limitation(s) as shown in the rejection of claim 14. Kotler & Armstrong further discloses the following:

- *said at least one marketing mix comprises one or more product characteristics selected from the group of product characteristics consisting of: product configuration; product pricing; and product positioning.* (See at least Kotler & Armstrong: page 49)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Ostroff/Asplen/Miller/Stewart with the technique of Kotler & Armstrong because the modification would provide the benefit of a more efficient tool for conducting market



research by continuously and comprehensively monitoring a competitor's website (See at least Ostroff: page 1, paragraph 11).

Claim 28: Ostroff/Asplen/Miller/Stewart discloses the limitation(s) as shown in the rejection of claim 27. Kotler & Armstrong further discloses the following:

- *said at least one marketing mix comprises one or more product characteristics selected from the group of product characteristics consisting of: product configuration; product pricing; and product positioning.* (See at least Kotler & Armstrong: page 49)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Ostroff/Asplen/Miller/Stewart with the technique of Kotler & Armstrong because the modification would provide the benefit of a more efficient tool for conducting marketing research by continuously and comprehensively monitoring a competitor's website (See at least Ostroff: page 1, paragraph 11).

Claim 32: Ostroff/Asplen/Miller/Stewart discloses the limitation(s) as shown in the rejection of claim 31. Kotler & Armstrong further discloses the following:

- *said at least one marketing mix comprises one or more product characteristics selected from the group of product characteristics consisting of: product configuration; product pricing; and product positioning.* (See at least Kotler & Armstrong: page 49)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Ostroff/Asplen/Miller/Stewart with the technique of Kotler & Armstrong because the modification would provide the benefit of a more efficient tool for conducting market research by continuously and comprehensively monitoring a competitor's website (See at least Ostroff: page 1, paragraph 11).

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7. Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostroff/Asplen/Miller/Stewart and further in view of Stewart and Harshaw (US 2001/0010041 A1).

Claim 3: Ostroff/Asplen/Miller/Stewart discloses the limitation(s) as shown in the rejection of claim 1. Stewart further discloses the following:

- *conducting further online market research based on said input.* (See at least Stewart: page 4, paragraph 54. Stewart teaches a method of online market research based on a product marketing mix provided by a merchant.)

Stewart does not explicitly disclose the remaining limitation(s) alone. However, Harshaw discloses the following:

- *obtaining input from said merchant in response to said at least one marketing mix;* (See at least Harshaw: page 3, paragraphs 36. Harshaw teaches a method of obtaining feedback from merchants in regards to a product's marketing mix.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen/Miller with the marketing techniques of Stewart and Harshaw because the modification would provide the benefit of a more cost effective method of new product development (See at least Harshaw: page 1, paragraph 4).

Claim 16: Ostroff/Asplen/Miller/Stewart discloses the limitation(s) as shown in the rejection of claim 14. Stewart further discloses the following:

- *computer program code means for conducting further online market research based on said input.* (See at least Stewart: page 4, paragraph 54. Stewart teaches a method of online

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market research based on a product marketing mix provided by a merchant.)

Stewart does not disclose the remaining limitation(s). However,

Harshaw further discloses the following:

- *computer program code means for obtaining input from said merchant in response to said at least one marketing mix; (See at least Harshaw: page 3, paragraphs 36. Harshaw teaches a method of obtaining feedback from merchants in regards to a product's marketing mix.)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen/Miller with the marketing techniques of Stewart and Harshaw because the modification would provide the benefit of a more cost effective method of new product development (See at least Harshaw: page 1, paragraph 4).

8. Claims 7, 8, 11-13, 20, 21, 24-26, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostroff and in view of Asplen, and further in view of Miller.

Claim 7: Ostroff discloses the following limitation(s):

- *periodically obtaining data, from competitors' websites, relating to products similar to said merchant's product; processing said data relating to said similar products; detecting a change in said identified product and positioning attributes relating to at least one similar product; (See at least Ostroff: page 2, paragraphs 22-26; page 4-5, paragraph 63. Ostroff teaches a method of periodically obtaining data from competitors' websites,*

processing said product data, and using trend analysis to detect changes in products over time)

Ostroff does not explicitly disclose the remaining limitation(s) alone.

However, Asplen discloses the following:

- *obtaining data relating to one or more of a merchant's products;*  
(See at least Asplen: col. 2, lines 45-60)

Asplen does not explicitly disclose the remaining limitation(s) alone.

However, Miller discloses the following:

- *identifying product attributes and positioning attributes based on said processed data; identifying one or more of said merchant's products that require repositioning and/or repricing based on said detected change.* (See at least Miller: Figs. 7-12; page 3, paragraphs 35-38; pages 4-5, paragraphs 43 and 51. Miller teaches a method of identifying attributes based on data received from customers as well as attributes based on data received from competitors and identifying products that may require repositioning and/or repricing.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff with the marketing technique of Asplen and Miller because the modification would provide the benefit of an improved means of developing and packaging new products based on information obtained from consumers, manufacturers, and competitors (See at least Miller: page 1, paragraph 9).

Claim 8: Ostroff/Asplen/Miller discloses the limitation(s) as shown in the rejection of claim 7. Ostroff and Miller further disclose the following:

- *conducting online market research based on said identified attributes; and* (See at least Ostroff: page 2, paragraphs 22-26)
- *identifying at least one marketing mix for one or more of said merchant's products based on a result of said online market research.* (See at least Miller: Fig. 12; page 6, paragraph 63)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen with the marketing technique of Miller because the modification would provide the benefit of an improved means of developing and packaging new products based on information obtained from consumers, manufacturers, and competitors (See at least Miller: page 1, paragraph 9).

Claim 11: Ostroff/Asplen/Miller discloses the limitation(s) as shown in the rejection of claim 7. Ostroff and Miller further disclose the following:

- *said data relating to said similar products comprises one or more data items for each of said similar products, said data items selected from the group of data items consisting of: a product attribute name-value pair; a positioning attribute name-value pair; and product pricing.* (See at least Miller: page 3, paragraphs 35-38; Fig. 8. Miller teaches a method of collecting product attributes data, including product pricing data. See at least Ostroff: pages 4-5, paragraph 63. Ostroff teaches a method of collecting product positioning data.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen with the marketing technique of Miller because the modification would provide the benefit of an improved means of

developing and packaging new products based on information obtained from consumers, manufacturers, and competitors (See at least Miller: page 1, paragraph 9).

Claim 12: Ostroff/Asplen/Miller discloses the limitation(s) as shown in the rejection of claim 11. Ostroff further discloses the following:

- *said step of processing comprises the sub-steps of: filtering a list of said similar products; filtering said product and positioning attributes. (See at least Ostroff: page 3, paragraph 39. Ostroff teaches a method of generating reports consisting of product data filtered from various competitors' sites relating to products comparable to the merchant's products.)*

Claim 13: Ostroff/Asplen/Miller discloses the limitation(s) as shown in the rejection of claim 12. Miller further discloses the following:

- *generating a product attribute map by mapping said similar products onto said product attributes; generating a positioning attribute map by mapping said similar products onto said positioning attributes; (See at least Miller: Fig. 4)*
- *identifying areas on said product attribute map that are uninhabited by said similar products; identifying areas on said positioning attribute map that are uninhabited by said similar products; (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)*
- *applying clustering techniques to said product attribute map to identify clusters of products having similar product attributes; and applying clustering techniques to said positioning attribute map to identify clusters of products having similar positioning attributes. (See at least Miller: Fig. 9; page 5, paragraph 59)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen with the marketing technique of Miller because the modification would provide the benefit of an improved means of developing and packaging new products based on information obtained from consumers, manufacturers, and competitors (See at least Miller: page 1, paragraph 9).

Claim 20: Ostroff discloses the following limitation(s):

- *computer program code means for periodically obtaining data, from competitors' websites, relating to products similar to said merchant's product; computer program code means for processing said data relating to said similar products; computer program code means for detecting a change in said identified product and positioning attributes relating to a similar product;* (See at least Ostroff: page 2, paragraphs 22-26; page 4-5, paragraph 63. Ostroff teaches a method of obtaining data from competitors' websites, processing said product data, and using trend analysis to detect changes in products over time)

Ostroff does not explicitly disclose the remaining limitation(s) alone. However, Asplen discloses the following:

- *computer program code means for obtaining data relating to one or more of a merchant's products;* (See at least Asplen: col. 2, lines 45-60)

Asplen does not explicitly disclose the remaining limitation(s) alone. However, Miller discloses the following:

- *computer program code means for identifying product attributes and positioning attributes based on said processed data; and*

*computer program code means for identifying one or more of said merchant's products that require repositioning and/or repricing based on said detected change. (See at least Miller: page 3, paragraphs 35-38; pages 4-5, paragraphs 43 and 51. Miller teaches a method of identifying attributes based on data received from customers as well as attributes based on data received from competitors. Miller also teaches a method of identifying products that may require repositioning and/or repricing based on obtained data relating to a competitor's product.)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen with the marketing technique of Miller because the modification would provide the benefit of an improved means of developing and packaging new products based on information obtained from consumers, manufacturers, and competitors (See at least Miller: page 1, paragraph 9).

Claim 21: Ostroff/Asplen/Miller discloses the limitation(s) as shown in the rejection of claim 20. Ostroff further discloses the following:

- *computer program code means for conducting online market research based on said identified attributes; and (See at least Ostroff: page 2, paragraphs 22-26)*

Ostroff does not disclose the remaining limitation(s). However, Miller further discloses the following:

- *computer program code means for identifying at least one marketing mix for one or more of said merchant's products*



*based on a result of said online market research.* (See at least

Miller: Fig. 12; page 6, paragraph 63)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen with the marketing technique of Miller because the modification would provide the benefit of an improved means of developing and packaging new products based on information obtained from consumers, manufacturers, and competitors (See at least Miller: page 1, paragraph 9).

Claim 24: Ostroff/Asplen/Miller discloses the limitation(s) as shown in the rejection of claim 20. Ostroff and Miller further disclose the following:

- *said data relating to said similar products comprises one or more data items for each of said similar products, said data items selected from the group of data items consisting of: a product attribute name-value pair; a positioning attribute name-value pair; and product pricing.* (Miller: page 3, paragraphs 35-38; Fig. 8. Miller teaches a method of collecting product attributes data, including product pricing data. Ostroff: pages 4-5, paragraph 63. Ostroff teaches a method of collecting product positioning data.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen with the marketing technique of Miller because the modification would provide the benefit of an improved means of developing and packaging new products based on information obtained from consumers, manufacturers, and competitors (See at least Miller: page 1, paragraph 9).

Claim 25: Ostroff/Asplen/Miller discloses the limitation(s) as shown in the rejection of claim 24. Ostroff further discloses the following:

- *said computer program code means for processing comprises: computer program code means for filtering a list of said similar products; computer program code means for filtering said product and positioning attributes. (See at least Ostroff: page 3, paragraph 39. Ostroff teaches a method of generating reports consisting of product data filtered from various competitors' sites relating to products comparable to the merchant's products.)*

Claim 26: Ostroff/Asplen/Miller discloses the limitation(s) as shown in the rejection of claim 25. Miller further discloses the following:

- *computer program code means for generating a product attribute map by mapping said similar products onto said product attributes; computer program code means for generating a positioning attribute map by mapping said similar products onto said positioning attributes; (See at least Miller: Fig. 4)*
- *computer program code means for identifying areas on said product attribute map that are uninhabited by said similar products; computer program code means for identifying areas on said positioning attribute map that are uninhabited by said similar products; (See at least Miller: Fig. 5; page 4, paragraph 49; page 5, paragraph 60)*
- *computer program code means for applying clustering techniques to said product attribute map to identify clusters of products having similar product attributes; and computer program code means for applying clustering techniques to said positioning attribute map to identify clusters of products having*

*similar positioning attributes.* (See at least Miller: Fig. 9; page 5, paragraph 59)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen with the marketing technique of Miller because the modification would provide the benefit of an improved means of developing and packaging new products based on information obtained from consumers, manufacturers, and competitors (See at least Miller: page 1, paragraph 9).

Claim 35: Ostroff discloses the following limitation(s):

- *obtaining, from competitors' websites, data relating to products similar to said proposed new product; processing said data relating to said similar products;* (See at least Ostroff: page 2, paragraphs 22-26. Ostroff teaches a method of obtaining data from competitors' websites and processing said product data.)

Ostroff does not explicitly disclose the remaining limitation(s) alone. However, Asplen discloses the following:

- *obtaining data relating to a proposed new product from a merchant;* (See at least Asplen: col. 2, lines 45-60)

Asplen does not explicitly disclose the remaining limitation(s) alone. However, Miller discloses the following:

- *identifying product attributes and positioning attributes based on said processed data; and identifying at least one marketing mix for said proposed new product based on selected ones of said identified attributes.* (See at least Miller: Figs. 7-12; page 3, paragraphs 35-38; pages 4-5, paragraphs 43 and 51. Miller teaches a method of identifying attributes based on data

received from customers as well as attributes based on data received from competitors. Miller also teaches identifying a marketing mix based on responses received from consumers.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff with the marketing techniques of Asplen and Miller because the modification would provide the benefit of an improved means of developing and packaging new products based on information obtained from consumers, manufacturers, and competitors (See at least Miller: page 1, paragraph 9).

9. Claims 9 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostroff/Asplen/Miller and further in view of Kotler & Armstrong.

Claim 9: Ostroff/Asplen/Miller discloses the limitation(s) as shown in the rejection of claim 7. However, Ostroff/Asplen/Miller does not disclose the remaining limitations. Kotler & Armstrong further discloses the following:

- *said at least one marketing mix comprises one or more product characteristics selected from the group of product characteristics consisting of: product configuration; product pricing; and product positioning.* (See at least Kotler & Armstrong: page 49)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Ostroff/Asplen/Miller with the marketing technique of Kotler & Armstrong because the modification would provide the benefit of a more efficient tool for conducting market research by continuously and comprehensively monitoring a competitor's website (See at least Ostroff: page 1, paragraph 11).

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Claim 22: Ostroff/Asplen/Miller discloses the limitation(s) as shown in the rejection of claim 20. However, Ostroff/Asplen/Miller does not disclose the remaining limitations. Kotler & Armstrong further discloses the following:

- *said at least one marketing mix comprises one or more product characteristics selected from the group of product characteristics consisting of: product configuration; product pricing; and product positioning.* (See at least Kotler & Armstrong: page 49)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Ostroff/Asplen/Miller with the marketing technique of Kotler & Armstrong because the modification would provide the benefit of a more efficient tool for conducting market research by continuously and comprehensively monitoring a competitor's website (See at least Ostroff: page 1, paragraph 11).

10. Claims 10 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostroff/Asplen/Miller and further in view of Harshaw and Stewart.

Claim 10: Ostroff/Asplen/Miller discloses the limitation(s) as shown in the rejection of claim 7. However, Ostroff/Asplen/Miller does not disclose the remaining limitations. Harshaw further discloses the following:

- *obtaining input from said merchant in response to said at least one marketing mix;* (See at least Harshaw: page 3, paragraphs 36. Harshaw teaches a method of obtaining feedback from merchants in regards to a product's marketing mix.)

Harshaw does not disclose the remaining limitation(s). However, Stewart discloses the following:

- *conducting further online market research based on said input.* (See at least Stewart: page 4, paragraph 54. Stewart teaches a

method of online market research based on a product marketing mix provided by a merchant.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen/Miller with the marketing techniques of Harshaw and Stewart because the modification would provide the benefit of a more cost effective method of new product development (See at least Harshaw: page 1, paragraph 4).

Claim 23: Ostroff/Asplen/Miller discloses the limitation(s) as shown in the rejection of claim 20. However, Ostroff/Asplen/Miller does not disclose the remaining limitations. Harshaw further discloses the following:

- *computer program code means for obtaining input from said merchant in response to said at least one marketing mix; (See at least Harshaw: page 3, paragraphs 36. Harshaw teaches a method of obtaining feedback from merchants in regards to a product's marketing mix.)*

Harshaw does not disclose the remaining limitation(s). However, Stewart discloses the following:

- *computer program code means for conducting further online market research based on said input. (See at least Stewart: page 4, paragraph 54. Stewart teaches a method of online market research based on a product marketing mix provided by a merchant.)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the online market research method of Ostroff/Asplen/Miller with the marketing techniques of Harshaw and Stewart because the modification would provide the benefit of a more

cost effective method of new product development (See at least Harshaw: page 1, paragraph 4).

**Examiner's Note:** The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **John Preston** whose telephone number is **571.270.3918**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **ALEXANDER KALINOWSKI** can be reached at **571.272.6771**.

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